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AEI-BROOKINGS JOINT CENTER FOR REGULATORY STUDIES

The Fear of Litigation Study: The Impact on Medicine

Executive Summary

Related Publication 02-5

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This study was conducted for Common Good among a national sample of physicians, nurses and hospital administrators. This survey sought to provide some insight into the impact of the fear of litigation on the practice of medicine and the delivery of medical care. The full study can be found at http://www.ourcommongood.com/lit_report.pdf.

COMMON GOOD

REFORMING AMERICA'S LAWSUIT CULTURE

The Fear of Litigation Study: The Impact on Medicine Executive Summary

Medicine is clearly a highly dynamic and ever-changing field. Technological and scientific advances, the development of HMOs and managed care, as well as societal changes all shape it on an on-going basis. Although malpractice litigation has its roots back in the mid-1800s, one area of interest is how the increasingly litigious nature of American society today is influencing the field of medicine. Rather than explore the number of suits, the size of jury awards, or the costs of malpractice insurance, this survey sought to explore—through interviews with physicians, nurses and hospital administrators—how the fear of litigation affects the practice of medicine and the delivery of medical care.

The results are striking. Concerns about liability are influencing medical decision-making on many levels. From the increased ordering of tests, medications, referrals, and procedures to increased paperwork and reluctance to offer off-duty medical assistance, the impact of the fear of litigation is far-reaching and profound.

Broadly, **half (51%) of all physicians think that their ability to provide quality medical care to patients has gotten worse in the past five years.** Further, more than three-fourths of physicians feel that **concern about malpractice litigation (76%) has hurt their ability to provide quality care in recent years.** All respondent groups report increased levels of concern or awareness about the risks of malpractice liability over their career and **nearly one-third (29%) of physicians state that they have been interested in a certain specialty but shied away from it due to fear of higher legal exposure.** These findings seem to suggest that the broad impact of the fear of litigation is significant and growing.

Some of the more arresting study findings are on the impact of liability concerns on the provision of medical care. Broadly, **nearly all physicians and hospital administrators feel that unnecessary or excessive care is very often or sometimes provided because of fear about litigation.** More specifically, physicians report that the fear of malpractice claims causes themselves and/or other physicians to:

- **Order more tests than they would based only on professional judgment of what is medically needed.** (91% have noticed other physicians, and 79% report they themselves do this due to concerns about malpractice liability)

- **Refer patients to specialists more often** than they would based only on their professional judgment of what is medically needed. (85% have noticed other physicians, and 74% report they themselves do this due to concerns about malpractice liability)
- **Suggest invasive procedures such as biopsies to confirm diagnoses more often** than they would based only on their professional judgment of what is medically needed. (73% have noticed other physicians, and 51% report they themselves do this due to concerns about malpractice liability)
- **Prescribe more medications such as antibiotics** than they would based only on their professional judgment of what is medically needed. (73% have noticed other physicians, and 41% report they themselves do this due to concerns about malpractice liability)

A similar, although slightly less dramatic trend is seen when looking at patient end of life issues.

- **Just under two-thirds (61%) of physicians have noticed physicians being reluctant to make what they believe to be humane choices because of concerns that a family member might bring suit.**
- **Half (50%) have noticed a physician resorting to aggressive treatments of terminally ill patients because of liability concerns.**
- **Just under half (42%) have noticed a physician or staff member going against a patient's expressed wishes concerning life-prolonging medical interventions** because of concerns that a family member might bring suit.

Not surprisingly, there is **nearly unanimous agreement among physicians, nurses and hospital administrators that these extra tests, referrals and procedures contribute in a significant way to health care costs issues.**

Views on the conducive nature of the hospital environment are mixed when it comes to issues of medical errors and liability protocol. Strong majorities of hospital administrators and nurses feel that staff in their hospital are encouraged to report medical errors such as dispensing incorrect medication or medication doses, surgical mistakes and human error in interpreting results of diagnostic tests. Only two thirds (63%) of physicians, however, agree perhaps due to a greater sense of personal exposure.

- **Hospital administrators feel that while established rules and protocol have clearly improved or enhanced patient safety, they also believe that unnecessary rules of protocol are often created** out of a concern about liability protection.

- **Nearly half (43%) of all nurses also feel prohibited or discouraged from doing what they think is right for the patient** because of rules or protocols set up for liability protection.

Conversations with colleagues appear to be impacted by the fear of litigation. While more than two-thirds of both physicians and nurses report that frank discussions of an adverse event or error at least sometimes helps them or a colleague avoid making a similar mistake in an actual medical case, many report that their colleagues are often uncomfortable having such conversations.

- **Only one-fourth or fewer of physicians, nurses and hospital administrators think that their colleagues are very comfortable discussing adverse events or uncertainty about proper treatment with them.**
- **Even fewer – roughly 5%—think that their colleagues are very comfortable discussing medical errors with them.**

Fear of liability is cited by physicians and hospital administrators as the leading factor that discourages medical professionals from openly discussing and thinking of ways to reduce medical errors. By comparison, nurses are more likely to point to not wanting to upset or criticize a colleague as a main reason. Although hospital administrators and nurses somewhat disagree, **physicians feel that fear of liability at least sometimes also leads to hospitals avoiding disclosing quality deficiencies and is the primary reason why hospitals do not share the results of inquiries into patient injury cases.**

Patient relationships also appear to be somewhat impacted by litigation concerns. While the overwhelming majority of nurses report that malpractice concerns have not impacted their patient relations and discussions at all, **significant numbers of physicians feel that malpractice concerns have made their relationships with patients less personal (38%) and caused them to be more candid in their conversations with patients (43%).** Interestingly, perceptions differ greatly between hospital administrators and physicians and nurses on whether physicians have become more likely to admit errors and apologize. While half (51%) of all hospital administrators think that physicians have become more likely to admit errors and apologize, only one-fourth of nurses and physicians themselves think this is true.

One area where there is clear agreement is the influence of the fear of litigation on administrative issues. Well over three-fourths of all physicians and nurses (84% and 81%, respectively) report that they **spend more time on paper work**, such as medical record documentation, because of malpractice concerns than they would based solely on the patient's clinical needs. Additionally, **nearly all physicians (94%) believe that written descriptions of cases are very often or sometimes influenced by the fear of litigation**.

Physicians, nurses and hospital administrators were somewhat divided on their interpretation of the November 1999 Institute of Medicine reports (which suggested that

between 44,000 and 98,000 patients die annually in the United States as a result of preventable hospital errors) however they generally disagreed with this finding. Their views on malpractice claims were more common. **The clear majority of physicians, nurses and hospital administrators all feel that malpractice claims occur mainly from adverse results rather than actual error.** Physicians see the patient/physician relationship as the most important factors in determining whether or not an injured patient brings a lawsuit or not. Quality of communications as well as greed and the patient's financial status are also noted as important factors by physicians, nurses and hospital administrators.

That many medical professionals behavior is clearly influenced by the fear of litigation can perhaps be explained by the finding that **the overwhelming majority of physicians (83%) and hospital administrators (72%) do not feel that physicians can trust the current system of justice to achieve a reasonable result if sued.** When coupled with the previously noted finding that most feel that malpractice claims occur mainly from adverse results rather than actual error this sense of distrust in the current system is underscored. It is not surprising then, that physicians nearly unanimously, as well as at least three-fourths of nurses and hospital administrators would **instead favor switching to a medical court presided over by independent medical professionals and other experts that would have authority to review and decide injury cases.**

Suggestions by physicians and hospital administrators for improving the malpractice and patient safety situation include a number of legal reforms such as caps on judgments/liability, general tort reform, as well as improved communication with patients. Nurses were more likely to look to improved patient communication and staff education improvements for possible improvement. **While changes in levels of career satisfaction have caused roughly half of physicians, nurses, and hospital administrators to consider leaving medicine, changes made by HMOs as well as those brought about by the threat of malpractice liability have had nearly as great an impact upon physicians.**

In summary, it is clear that the practice of medicine and the delivery of medical care are significantly influenced and shaped by fear of malpractice claims and perceived unreliability of the current system of justice. With adverse consequences ranging from cost implications to quality of care the impact of the fear of litigation cannot be ignored and is an area that should be included in any efforts to improve medicine in America today and restore health to health care.

*This summary was written for Common Good, www.ourcommongood.com. The complete report, **The Fear of Litigation Study – The Impact on Medicine**, can be found at:*

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